

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO**

OHIO POLICE & FIRE PENSION FUND, OHIO  
PUBLIC EMPLOYEES RETIREMENT SYSTEM,  
STATE TEACHERS RETIREMENT SYSTEM OF  
OHIO, SCHOOL EMPLOYEES RETIREMENT  
SYSTEM OF OHIO, and OHIO PUBLIC  
EMPLOYEES DEFERRED COMPENSATION  
PROGRAM,  
  
Plaintiffs,  
  
v.  
  
STANDARD & POOR'S FINANCIAL SERVICES  
LLC, THE MCGRAW-HILL COMPANIES, INC.,  
MOODY'S CORP., MOODY'S INVESTORS  
SERVICE, INC., and FITCH, INC.,  
  
Defendants.

Case No.: 2:09 cv 1054

Judge Graham  
Magistrate Judge Kemp

**THE OHIO FUNDS' THIRD NOTICE OF SUPPLEMENTAL AUTHORITY IN  
OPPOSITION TO DEFENDANTS RATING AGENCIES' MOTION TO DISMISS**

The Ohio Funds<sup>1</sup> respectfully submit this Third Notice of Supplemental Authority to bring to the Court's attention a decision issued by Judge Victor Marrero of the United States District Court, Southern District of New York in *Pasha A. Anwar v. Fairfield Greenwich Limited, et al.*, No. 09 Civ. 0118 (VM) (S.D.N.Y. July 29, 2010) (attached hereto as Exhibit A). The *Anwar* litigation is a putative class action on behalf of

<sup>1</sup> The Ohio Funds are Plaintiffs Ohio Police & Fire Pension Fund, Ohio Public Employees Retirement System, State Teachers Retirement System of Ohio, School Employees Retirement System of Ohio, and Ohio Public Employees Deferred Compensation Program.

individuals and entities who invested large sums of money in four hedge funds founded and operated by the Fairfield Greenwich Group (“Fairfield Greenwich”). *Anwar*, at 1. The complaint alleges violations of federal securities law and common law tort, breach of contract and quasi-contract causes of action. *Id.* Fairfield Greenwich and numerous co-defendants moved to dismiss the complaint in its entirety, based in part on the theory that the Martin Act preempts Anwar’s common law claims, save for fraud. *Id.* In an exhaustive opinion detailing the evolution of jurisprudence interpreting the Martin Act, which Judge Marrero described as “[t]he unwitting perpetuation of error,” Judge Marrero emphatically rejected the principle that the Martin Act preempts common law causes of action that exist independent of the Martin Act but whose proof relies on the same facts that would support a Martin Act prosecution by the New York Attorney General. *Id.* at 3-4. Judge Marrero concluded his opinion by stating that “[t]his Court is hopeful that federal district courts, the Court of Appeals for the Second Circuit, or the New York Court of Appeals will not take as long to correct the Martin Act’s misapplication before it fossilizes any further. *Id.* at 43.

To the extent that New York law applies to the Ohio Funds’ claims here – which, for the reasons set forth in the Ohio Funds’ March 22, 2010 Memorandum of Law in Opposition to Defendant Rating Agencies’ Motion to Dismiss (“Opp.”), it does not – Plaintiffs respectfully submit that the decision by Judge Marrero further supports the position that the Martin Act does not bar the Ohio Funds’ common law claims. (*See Opp.* at 62–68.)

Dated: August 4, 2010

Respectfully submitted,

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OHIO ATTORNEY GENERAL

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**CERTIFICATE OF SERVICE**

I certify that on this 4<sup>th</sup> day of August, 2010, the foregoing was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ John P. Gilligan  
*One of the Attorneys for the Plaintiffs*